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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,889	03/04/2002	Natalie Rose Noel	NRN-001	6465
7590		05/04/2004	EXAMINER	
Dane C. Butzer		HALE, GLORIA M		
681 Woodduck Ct.		ART UNIT		
Columbus, OH 43215		PAPER NUMBER		
		3765		

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,889

Applicant(s)

NOEL ET AL.

Examiner

Gloria Hale

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stack (US 2723396) in view of Hyman (US 3968803).

Stack discloses a restraint that reduces breast movement, is elastic and inelastic as broadly claimed, which fits about a wearer and the method of use as claimed. However, the fastener of Stack is not adjustable. Hyman discloses a chest restraint with an adjustable fastener, hook and loop material (30,32) as claimed to provide an adjustable fit on the wearer. (See Stack, figure 1 and cols. 1-2). Nothing precludes the Stack embodiment of figure 1 as being reversed with the fastener in the rear. The statement in the claims that it "is disposed to be positioned" is a broad statement wherein the Stack restraint is wearable in the rear. (See Stack, fig. 1 and cols. 1-2 and Hyman, figure 1 and 2 and col. 4). Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the restraint of Stack to include an adjustable hook and loop fastener in order to better fit the restraint on the wearer and to provide the exact amount of tension about the breasts. The Stack restraint is sized as broadly claimed and Stack and Hyman disclose the strap as being wider at the tops of the breasts as claimed and it would have been obvious to one of

ordinary skill in the art at the time the invention was made to modify the elastic of stack which is of a single elastic material to structure it wider at the breast areas as disclosed by Hyman in order to better cover the breasts of the wearer. Nothing in Stack precludes it from being worn with a bra if a wearer desires. Stack incorporates a bra 30 as claimed and as seen in figure 3 of Stack. Stack discloses the embodiment of figure 3 that is a bra which is wearable as a sports bra.

Response to Arguments

Applicant's arguments filed 2-5-04 have been fully considered but they are not persuasive. Nothing precludes a wearer from wearing the Stack and Hyman structures during exercise or athletic activity wherein any movement about is considered to be exercise or athletic activity. Applicants specification only uses the same broad terminology of "sufficiently elastic and in elastic" and does not go in to specific detail as to how the strap is structured more than what is generally known to be inelastic and elastic. Stack is also elastic and therefore is structured broadly to provide such elasticity since it assists the body in restraining movement. Any body movement at all is considered exercise such as walking in addition to general movement. Applicant's specification does not specify specific "exercises" or types of movement. The Stack strap restricts movement in the torso and does not limit to walking exercise or any other type of exercise. Stack performs the claimed methods of use since it restrains the torso of a wearer during movement as discussed above. Applicant has not disclosed or claimed any specific level of elasticity or inelasticity or any level which is more or less than that which is disclosed by Stack. The articles cited by applicant do not overcome

the rejection of the present claims. The present claims do claim the limited strap size which is placed on the top edge of the breasts as shown in applicant's figures but rather claim a broad strap restraint as disclosed by Stack and Hyman.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gloria Hale
Primary Examiner
Art Unit 3765
